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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,413	07/07/2006	Giorgio Del Fabro	8455.016.US0000	5858
77213	7590	01/27/2010		
Novak Druce + Quigg, LLP 1300 Eye Street, NW, Suite 1000 Suite 1000, West Tower Washington, DC 20005			EXAMINER ADAMS, GREGORY W	
			ART UNIT 3652	PAPER NUMBER
			MAIL DATE 01/27/2010	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/585,413	Applicant(s) DEL FABRO ET AL.	
	Examiner GREGORY W. ADAMS	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8 and 10-25 is/are rejected.
- 7) ☒ Claim(s) 6 and 9 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 11-19 & 21-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miglioranza (US 2003/0202873) (previously cited) in view of Berz (US 4,648,770) (previously cited) and Sartorio (US 5,345,806) (previously cited).

Miglioranza discloses a feeder device comprising:

- first magnetic means 8; and
- second means 17.

Berz discloses transferring bars from a first magnetic means 11a to a second magnetic means 25 which picks up said bars from first magnetic means 11a. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was

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made to modify the apparatus of Miglioranza to include first and second magnetic means working together to transfer parts therebetween, as per the teachings of Berz, as is well known in the art of automatic machinery used to handle steel studding, fence posts, angle irons, and channel. And, Sartorio discloses a second means 50 which is able to pick up from a first means 60 (FIG. 4) an article for loading into a machine. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Miglioranza to include a second means which picks up from a first means, as per the teachings of Sartorio, which "allows the maximum use to be made of the productive capacity." C1. And, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Berz in view of the combination of Miglioranza and Sartorio where the predictable result of automatic transfer between articles is achieved.

Claims 4-5, 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miglioranza in view of Berz and Sartorio and further in view of Gepfert (US 5,387,072). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Miglioranza to include a stop element 250, 256 along a second means return travel, as per the teachings of Gepfert, as is well known in bar feeder devices to prevent an article 11 from moving toward fork assembly 13.

Claims 10 & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miglioranza in view of Berz and Sartorio and further in view of Del Fabro (US 4,732,066). Therefore, it would have been obvious to one having ordinary skill in the art

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at the time the invention was made to modify the apparatus of Miglioranza to include a header element 36, as per the teachings of Del Fabro, where the “shortcomings to be found in known machines lie in the fact that the withdrawal of bars from their bundle takes place in a substantially haphazard manner, and therefore the heads of the bars are not aligned. This entails the need to perform a first facing shearing operation so as to obtain alignment, with a resulting loss of time and waste of material.”

Allowable Subject Matter

Claims 6 & 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed Jan. 7, 2010 have been fully considered but they are not persuasive. Claim elements “first magnetic means” and “second magnetic means” are means (or step) plus function limitations that invoke 35 U.S.C. 112, sixth paragraph. As a result and as required by 35 USC 112, sixth paragraph the examiner has interpreted these means as first and second magnets. Berz discloses first and second magnet(ic) means 11a, 25. As a result, applicant must state on the record where the corresponding structure, material, or acts are set forth in the written description of the specification that perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181. In this case Applicant has made no such statement on the record. Applicant argues that magnets are not magnetic means. Magnetic is defined as “1. of or pertaining to a magnet or magnetism.”

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www.dictionary.com. Thus, Berz's disclosure of magnets inherently includes magnetic means.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY W. ADAMS whose telephone number is (571)272-8101. The examiner can normally be reached on M-Th, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory W Adams/
Primary Examiner, Art Unit 3652